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DEPARTMENT OF STATE
THE LEGAL ADVISER

October 23, 1958

SECRET

TO : GEA - Mr. Hillenbrand
FROM : L/EUR - Richard D. Kearney
SUBJECT : Access to Steinstücken *Smith*

According to the information available in the Department, Steinstücken is a village of about 189 inhabitants and comprising about 3 acres in extent. It is considered to form a part of the district of Zehlendorf, which itself is part of the United States Sector of Berlin, although the village is completely in the Soviet Zone at a distance from the United States Sector boundary which in one document is given as fifty meters, and in another as five hundred yards and in another as one thousand meters. At present the occupants appear to move back and forth between West Berlin and the exclave by virtue of passes issued by the East German police.

Documentation regarding the status of Steinstücken is sparse and inconclusive. The Protocol on Zones of Occupation in Germany and the Administration of "Greater Berlin" of September 12, 1944, as amended (TIAS 3071) specifies that the district of Zehlendorf is to be occupied by forces of the United States. The map attached to the agreement to show the Berlin area, however, does not show Steinstücken as there is over-printing at the place on the map where the village would be located. There appears, however, to have been a Berlin Kommandatura Report of August 7, 1945, signed by the British, United States and Soviet elements which indicates Steinstücken constitutes part of Zehlendorf (See HICOG Berlin's BN-913 of October 22, 1951).

On October 18, 1951, the East German authorities declared Steinstücken was "administratively incorporated into the City of Potsdam." The United States Commander, Berlin immediately protested to the Soviet representative in Berlin by letter. On October 22, the deputy Soviet representative in Berlin, A. F. Susin, called on the United States Commander and informed him that the Soviets had instructed the East German authorities to withdraw the Volkspolizei from Steinstücken and have the village revert to its former status.

In the late spring of 1952 the freedom of access from Steinstücken to and from Zehlendorf was interfered with by Soviet soldiers patrolling the area, the felling of trees across the pathway, and halting deliveries of food supplies and mail. On June 5, 1952, Mr. Susin in the course of a discussion with Mr. Lyon of the United States Mission, stated that there was no question but that Steinstücken was part of the United States Sector and that the Soviets had made no attempts to place it under East German control.

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From the foregoing it may be taken as settled that, despite inadequate documentation, no real question exists as to the fact that Steinstücken forms a part of the United States Sector of Berlin. That being so, the rights of the United States in Steinstücken are of precisely the same nature as its rights in the other parts of the United States Sector of Berlin. These rights are those of an occupying power under international law. As the United States said in its note of July 6, 1948 to the Soviet Union. . . "the United States Government is in occupation of its sector in Berlin . . . as a matter of established right deriving from the defeat and surrender of Germany and confirmed by formal agreements among the principal allies." (Germany 1947-1949, Department of State Publication 3556, p. 205.)

The United States thus has a right to occupy Steinstücken as a part of the United States Sector of Berlin. For this right to be meaningful the United States must be in a position, if it so chooses, to station troops in the village, to supply those troops and to remove or replace them at will. This implied right of access to Steinstücken from the major portion of the United States Sector, is, in microcosm, identical with the United States' implied right of access to the United States Sector of Berlin from Western Germany. In each case the right of occupation provided by formal agreement would be meaningless unless it included the right to make the occupation physically effective.

There are, however, certain aspects in which the right of access to Steinstücken at this time differs from the over-all right of access to Berlin. The latter, although basically an implied right, nevertheless has been clarified and strengthened by a series of specific agreements with the Soviets on various aspects of such access, such as the Stalin-Truman exchange of letters in June, 1945, the New York and Paris Agreements of 1949, and the various quadripartite arrangements on air, rail and road access. It is within this framework of agreements that our right of access to Berlin is exercised and by which it is, in practice, limited. There is no such framework in the case of Steinstücken.

This lack of arrangements and agreements stems from the fact that the United States has never, so far as can be determined, made any attempt to occupy Steinstücken physically, either on a permanent or temporary basis, in the more than thirteen years which have elapsed since the occupation of the United States Sector of Berlin. This lack of action could give rise to the argument that our implied right of access to Steinstücken although concededly once existing, does not now exist either because it has been abandoned through non-user or because the implication of a right to access for the purpose of physical occupation has been rebutted by the fact that in thirteen years there has been no such physical occupation. It would be possible to fashion counter-arguments of some

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weight against either of these positions based upon such positions as the adequate exercise of authority through German official channels and the adequate resolution of previous difficulties regarding Steinstücken with the Soviet Occupation authorities. The net result, however, of our failure to take steps in connection with access to Steinstücken prior to this time cannot but be a weakening, both practically and legally, of the position as it existed in 1945.

Conclusion:

The United States has an implied right of access to the village of Steinstücken, as part of the United States Sector of Berlin, across that portion of the Soviet Zone lying between the village and the district of Zehlendorf. Failure to assert and exercise the right, however, for a period of over thirteen years has resulted in weakening the position of the United States to assert the right.

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